

DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may:

- (i) Cause actual or perceived partiality or unfairness;
- (ii) Involve the actual or apparent use of rank or position for personal gain; or
- (iii) Otherwise undermine discipline, morale, or authority.

(k) *Related rules.* (1) There is a prohibition on holding conflicting financial interests. See 5 CFR 2635.403, 18 U.S.C. 208, and 5 CFR part 2640.

(2) There are requirements regarding seeking outside employment. See 5 CFR 2635.601–2635.606 and subpart H of this part.

(3) There is a prohibition on engaging in outside employment or activities that conflict with official duties. See 5 CFR 2635.802.

(4) There are limitations on certain outside activities such as receipt of outside earned income by certain DoD Presidential appointees or non-career DoD employees, service as an expert witness, participation in professional associations, teaching, writing, speaking, or fundraising. See 5 CFR 2635.804–2635.808.

(5) There is a prohibition on the receipt of honoraria. See 5 CFR part 2636.

(6) There are prohibitions on the misuse of official position such as improper endorsements or improper use of non-public information. See 5 CFR 2635.701–2635.705.

(7) There are prohibitions on certain post-Government service employment. See subpart I of this part.

[59 FR 13214, Mar. 21, 1994. Redesignated and amended at 60 FR 20030, Apr. 24, 1995]

Subpart F—Political Activities

§ 84.17 Office of Personnel Management regulation.

See 5 CFR part 734, “Political Activities of Federal Employees.”

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.18 Political activities of civilian DoD employees.

(a) *Policy.*

(1) The policy governing the political activities of civilian DoD employees is derived from the Hatch Act Amendments, 5 U.S.C. 7321 through 7325. Guidance on the application of the Hatch Act Amendments is provided by the Hatch Act Hotline at the Office of Special Counsel at 1–(800) 854–2824.

(2) Primary enforcement responsibility under the Hatch Act Amendments lies with the Office of Special Counsel under 5 U.S.C. 1216(c); however, DoD Components have responsibility to investigate allegations of prohibited political activity by excepted service employees of the DoD Component.

(3) It is DoD policy to encourage civilian DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum extent possible consistent with the restrictions imposed by law and by this part.

(b) *Permissible activities.* Subject to paragraphs (b) and (c) of this section, civilian DoD employees may, in their personal capacities:

(1) Be candidates for public office in nonpartisan elections;

(2) Register and vote as they choose;

(3) Assist in voter registration drives;

(4) Express opinions about candidates and issues;

(5) Contribute money to political organizations;

(6) Attend political fundraising functions;

(7) Attend and be active at political rallies and meetings;

(8) Join and be an active member of a political party or club;

- (9) Sign nominating petitions;
- (10) Campaign for or against referendum questions, constitutional amendments, or municipal ordinances;
- (11) Campaign for or against candidates in partisan elections (see paragraph (b)(3) of this section);
- (12) Make campaign speeches for candidates in partisan elections (see paragraph (b)(3) of this section);
- (13) Distribute campaign literature in partisan elections (see paragraph (b)(3) of this section);
- (14) Hold office in political clubs or parties (see paragraph (b)(3) of this section).

(c) *Limitations.*

(1) Military members are not covered by the Hatch Act Amendments, 5 U.S.C. 7321 through 7327. Political activities of Military members are covered in § 84.19.

(2) Notwithstanding paragraph (a) of this section, as a matter of longstanding DoD policy, DoD employees who are appointed by the President, by and with the advice and consent of the Senate (e.g. the Secretary of Defense, the Secretaries of the Military Departments, etc.), and DoD employees who are appointed by the Secretary of Defense to non-career Senior Executive Service positions may not engage in activities that could be interpreted as associating the DoD with any partisan political cause or issue.

(3) The following DoD employees (except for Presidential appointees who are confirmed by and with the consent of the Senate) are prohibited from engaging in the activities described in paragraphs (a)(11) through (a)(14) of this section:

- (i) Employees of the National Security Agency;
- (ii) Employees of the Defense Intelligence Agency;
- (iii) Career members of the senior executive service;
- (iv) Administrative Law Judges; and
- (v) Contract appeals board members.

(d) *Prohibited activities.* Civilian DoD employees may not:

- (1) Use official authority or influence for the purpose of interfering with or affecting the result of an election;
- (2) Collect political contributions unless both the collector and the donor are members of the same Federal labor

organization or employee organization and the donor is not a subordinate;

(3) Knowingly solicit or discourage the political activity of any person who has business with DoD;

(4) Engage in political activity while on duty;

(5) Engage in political activity while in any Federal workplace;

(6) Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;

(7) Engage in political activity while using a Government owned or leased vehicle;

(8) Solicit political contributions from the general public;

(9) Be a candidate for public office in partisan elections;

(10) Wear political buttons on duty;

(11) Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority, including the political campaign to reelect the President or Vice President.

(e) *DoD employees residing in designated localities.* Notwithstanding the prohibitions of paragraph (c) of this section, a DoD employee (except those DoD employees listed in paragraph (b)(3) of this section) who resides in a municipality or political subdivision, either in the immediate vicinity of the District of Columbia or in which the majority of voters are employed by the Federal Government, as designated by OPM under 5 CFR 733.102(d) may:

(1) Run as an independent candidate for election to a partisan political office in an election for local office of the municipality or political subdivision provided the candidacy for, and service in, the partisan political office shall not result in neglect of, or interference with, the performance of the duties of the DoD employee or create an actual or apparent conflict of interest; and

(2) Accept or receive political contributions in connection with a local election of the municipality or political subdivision provided the DoD employee does not solicit political contributions from the general public.

(f) *Political recommendations.*

(1) The restrictions of 5 U.S.C. 3303 apply to all personnel actions described

§ 84.19

in 5 U.S.C. 2302(a)(2)(A) (i) through (x) for individuals in or applicants to the following DoD positions:

- (i) Competitive service employees;
- (ii) Career appointees in the Senior Executive Service; and
- (iii) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

(2) Each personnel action with respect to a DoD employee or applicant, as described in paragraph (c)(1) of this section, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

- (i) Members of Congress or Congressional employees;
- (ii) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;
- (iii) Officials of political parties; or
- (iv) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

(3) DoD employees may solicit, accept, and consider any statement with respect to a DoD employee or applicant described in paragraph (c)(1) of this section if the statement meets one of the following conditions:

- (i) It is pursuant to a request or requirement of the DoD Component and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the DoD employee or applicant;
- (ii) It relates solely to the character and residence of the DoD employee or applicant;
- (iii) It is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the DoD employee or applicant meets suitability or security standards;
- (iv) It is furnished by a former employer of the DoD employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, apti-

32 CFR Ch. I (7–1–98 Edition)

tude, and general qualifications of such DoD employee or applicant during employment with such former employer; or

(v) It is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

(4) DoD Component Heads are required by 5 CFR 300.801 to ensure that DoD employees and applicants described in paragraph (c)(1) of this section are notified of the provisions of 5 U.S.C. 3303.

[60 FR 20030, Apr. 24, 1995]

§ 84.19 Political activities of military members.

See DoD Directive 1344.10²⁰, “Political Activities by Members of the Armed Forces on Active Duty,” June 15, 1990.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

Subpart G—Financial and Employment Disclosure

§ 84.20 Office of Government Ethics regulation.

See 5 CFR part 2634, “Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees”.

§ 84.21 Public financial disclosure report (SF-278).

(a) *Individuals required to file*—(1) *Covered positions*. For purposes of this section, the following individuals are in “covered positions” and are required by the Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.) to file an SF 278, with their DoD component DAEO or designee as set out in paragraph (f) of this section:

- (i) Civilian Presidential appointees;
- (ii) Regular and reserve military officers whose pay grade is 0-7 or above;
- (iii) Members of the Senior Executive Service;
- (iv) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM-15 prescribed by 5 U.S.C.

²⁰ See footnote 4 to § 84.7(d).